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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
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BOB BURNS
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2014 JUL 16 P 4:06

AZ CORP COMMISSION
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Arizona Corporation Commission

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JUL 16 2014

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IN THE MATTER OF THE FORMAL
COMPLAINT AGAINST MOHAVE
ELECTRIC COOPERATIVE, INC.
FILED BY ROGER AND DARLENE
CHANTEL

DOCKET NO. E-01750A-09-0149

MOHAVE ELECTRIC COOPERATIVE,
INCORPORATED'S RESPONSE BRIEF

Mohave Electric Cooperative, Incorporated ("MEC") files this response pursuant to the June 2, 2014 Procedural Order ("PO"). MEC's response brief includes discussion, with supporting authority, of the following:

1. Complainants' position regarding Staff's written report regarding its equipment abutting Highway 66;
2. Complainants' position regarding the Motion to Transfer, the Motion to Enforce and the Motion to Hear Issues;
3. Whether the allegations regarding abandonment of lines on the Complainants' property pursuant to A.A.C. R14-2-202 are subject to dismissal under the doctrine of *res judicata*;¹ and
4. Miscellaneous additional issues raised by Complainants in their Opening Brief.

I. COMPLAINANTS' POSITION REGARDING STAFF REPORT

The Complainants make the following statement in their Opening Brief ("Op.Br."):

The Complainants do not wish to amend their complaint to

¹ PO, pp. 7, 1.15 – 8, 1.7.

1 include the allegations regarding MEC's equipment along
2 Highway 66.²

3 Complainants' abandonment of this issue is understandable. The Staff Report, at page 6, finds
4 MEC equipment and maintenance are safe and consistent with industry standards and
5 practices, as follows:

6 Based upon the physical inspection of the MEC distribution line
7 between mile markers 66 and 80 on US Route 66 in Mohave
8 County northeast of Kingman, Arizona on September 18, 2013
9 and subsequent analysis as discussed in this Memorandum, Staff
10 concludes that:

- 11 1. The line has been appropriately maintained by MEC and
12 there is no indication the condition of the line poses an
13 immediate safety or reliability risk. Poles have been inspected
14 and treated using industry standard practices. Deteriorated
15 poles have been replaced, as evidenced by the three new
16 poles identified out of the thirteen randomly inspected.
- 17 2. Only three poles out of the approximately 150 were noted as
18 moderately leaning. Two of those do not appear to pose an
19 immediate safety or reliability risk. The third on the de-
20 energized portion of the line located on the Chantels'
21 property could not be assessed.
- 22 3. The design of the line is typical horizontal construction.
23 Based upon the evaluation of two specific spans, and visual
24 inspection of the remainder of the line, the design appears to
25 meet RUS and NECS standards for span lengths, clearances,
and sag. Further, the Classes of the poles used in the subject
line are typical of those used in constructing a distribution
line of this type and voltage.
4. MEC's approach to systematically replace older facilities like
the subject line is consistent with good utility practice.

26 The Staff Report unequivocally debunks Complainants' allegations of unsafe poles along
27 Route 66. MEC commends the Complainants for their decision not to amend their Complaint

28 _____
29 ² Op.Br., p. 7, ll.1-3.

1 to include yet additional baseless allegations.

2 II. COMPLAINANTS' THREE MOTIONS

3 A. Complainants' Motion to Transfer

4 In their Motion to Transfer, Complainants have asked the Arizona Corporation
5 Commission ("Commission" or "ACC") to remove this proceeding to a non-existent forum
6 referenced as "public citizens' jurisdiction" or "public citizens' court." Complainants were to
7 define "Citizens Jurisdiction" and cite valid legal authority supporting the "citizens court's"
8 jurisdiction over a public utility corporation surmounting that of the Commission³.
9 Complainants suggest Citizens' Jurisdiction derives from the Declaration of Independence by
10 giving the governed people the right and duty to abolish a government agency that claims the
11 right to make decisions that cannot be appealed and by the right to a trial by jury.⁴ However,
12 the Complainants cite no case law, statutes, Commission rules, regulations, decisions or any
13 rule contained in the Arizona Rules of Civil Procedure defining "Citizens' Jurisdiction" or
14 supporting a "citizens court's" jurisdiction over the subject matter of their complaint. The
15 Motion to Transfer is frivolous and without merit. There is no basis for "transferring issues"
16 raised by Complainants' to a non-existent "citizens court."⁵ Moreover, the Commission
17 previously stayed this matter to allow Complainants to pursue remedies in the Arizona courts,
18 which follow the common law⁶ and, observe the right to trial by jury.⁷ As set forth in MEC's
19 pending July 12, 2013 Motion to Reconsider Motion to Dismiss Formal Complaint ("Motion

20 ³ PO, p. 7, ll 13-14.

21 ⁴ Op.Br., p. 7, ll 21-24.

22 ⁵ The Complainants also request the ACC place MEC into a receivership and "If the actions of this
23 agency continues in a destructive manner it then becomes the responsibility of Arizona State
24 Legislature to draft the necessary bills to disband this agency and fire all employees without retirement
25 compensation." These requests are so beyond anything reasonable that these requests will not be
addressed in this Response.

⁶ A.R.S. §1-201.

⁷ Art. 6, §17 Ariz. Const.; Rule 38, Ariz. Rules of Civil Procedure.

1 to Reconsider”), all of the claims arising from the facts set forth in the Complainants’ Formal
2 Complaint were decided adverse to Complainants and that judgment is now *res judicata*
3 mandating the dismissal of Complainants’ complaint in its entirety.⁸

4 **B. Complainants’ Motion to Enforce**

5 Complainants’ Motion to Enforce requests an Order⁹ to (1) require MEC to
6 reinstate electricity service pursuant to A.A.C. R14-2-211(A)(5) & (6); (2) require MEC to file
7 an application to abandon pursuant to A.A.C. R14-2-202(B); and (3) require Staff to visually
8 inspect MEC poles between mile markers 66 and 80. Complainants were directed to explain,
9 in their Opening Brief, why the Commission should act on the Motion to Enforce prior to any
10 evidentiary hearing on the Complaint (assuming *res judicata* does not require dismissal of the
11 Complaint) and to provide valid legal authority supporting their contention.¹⁰ Other than
12 asserting that the Declaration of Independence creates a right to alter or abolish the
13 Commission and calling on the Legislature to do so, Complainants cite no other legal authority
14 supporting their claim in their Opening Brief. There is no obligation to consider any
15 contention that is not supported by legal authority.¹¹ Complainants’ argument is without merit
16 and they have provided no basis to grant the Motion to Enforce at this stage of the proceeding.
17 For these reasons alone, the Motion to Enforce should be summarily dismissed. As discussed
18 herein, there is also no factual or legal support for Complainants’ Motion to Enforce.

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20 ⁸ *Hall v. Lalli*, 194 Ariz. 54, 57, 977 P.2d 776, 779 (1999) and *Red Bluff Mines, Inc. v. Industrial*
21 *Commission*, 144 Ariz. 199, 203, 696 P.2d 1348, 1352 (App. 1984) (a final judgment is *res judicata* as
22 between the same parties on all issues that were or might have been determined in the former action);
23 *Electrical District No. 2 v. Arizona Corp. Com’n*, 155 Ariz. 252, 259, 745 P.2d 1383, 1390 (1987)
24 (“ED2”) (Commission bound to follow Appeal Court’s unpublished decision involving the same issue
25 and parties).

⁹ Such action exceeds the authority of an Administrative Law Judge. Therefore, MEC treats the motion
as if requesting the Commission issue such an order.

¹⁰ PO, p. 7, ll. 18-21.

¹¹ *John Munic Enterprises, Inc. v. Laos*, 235 Ariz. 12, ¶30, 326 P.3d 279, 287 (App.2014).

1 The request for an order requiring Staff to visually inspect MEC's pole between
2 mile markers 66 and 80 along Route 66 is moot.¹² As discussed above, Complainants have
3 chosen not to amend their Complaint to include this allegation. Moreover, Staff has
4 independently conducted the desired inspection and concluded MEC's equipment and
5 maintenance are safe and consistent with industry standards and practices. For these reasons,
6 this portion of the Motion to Enforce must be dismissed.

7 As addressed in Section III, below, Complainants either do not understand or
8 intentionally misapply the Commission's rule relating to an application to abandon or
9 discontinue service. For the reasons set forth in Section III, Complainants claims are without
10 merit and this portion of the Motion to Enforce must be summarily dismissed.

11 As explained in Section II.B.1. below, Complainants request for an order to
12 require MEC to re-establish electric service is premised upon a claim that their service was
13 originally improperly disconnected. The Arizona Court of Appeals has determined MEC acted
14 properly, and in compliance with Commission rules, in disconnecting Complainants electric
15 service.¹³ Complainants do not contend they have corrected the unsafe condition or made
16 satisfactory arrangements to pay MEC for the costs it has incurred addressing the unsafe
17 conditions Complainants created. For these reasons, this portion of the Motion to Enforce
18 must be summarily dismissed.

19 1.R14-2-211(A)(5) & (6) – Termination of Service

20 Complainants contend MEC purportedly violated A.A.C. R14-2-211(A)(5) & (6)
21 when it disconnected their service in 2008. The contention is without merit. The propriety of
22

23 ¹² *Contempo-Tempe Mobile Home Owners Ass'n v. Steinert*, 144 Ariz. 227, 228, 696 P.2d 1376, 1377
24 (App. 1985) (matter moot where substantive issues resolved by stipulation).

25 ¹³ *Chantel v. Mohave Electric Cooperative*, Memorandum Decision, April 16, 2012 ("*Decision*"), pp.
6-8, ¶¶12-17. A copy of the *Decision* is attached as Exhibit A to MEC's Motion to Reconsider. It is
also available at 2013 WL 1628308.

1 MEC's disconnection was fully considered and resolved adverse to the Complainants in a final
2 non-appealable decision of the Arizona Court of Appeals.¹⁴

3 A.A.C. R14-2-211(A)(5) & (6) provide:

4 5. A utility shall not terminate residential service where the customer
5 has an inability to pay and:

- 6 a. The customer can establish through medical documentation
7 that, in the opinion of a licensed medical physician,
8 termination would be especially dangerous to the health of a
9 customer or a permanent resident residing on the customer's
10 premises, or
11 b. Life supporting equipment used in the home that is dependent
12 on utility service for operation of such apparatus, or
13 c. Where weather will be especially dangerous to health as
14 defined or as determined by the Commission.

15 6. Residential service to ill, elderly, or handicapped persons who
16 have an inability to pay will not be terminated until all of the
17 following have been attempted:

- 18 a. The customer has been informed of the availability of funds
19 from various government and social assistance agencies of
20 which the utility is aware.
21 b. A third party previously designated by the customer has been
22 notified and has not made arrangements to pay the outstanding
23 utility bill.

24 (emphasis added)

25 Complainants contend that, due to Mr. Chantel's alleged sleep apnea condition,
the foregoing rules applied when MEC disconnected their service in 2008. By their plain and
unambiguous terms, these rules only apply where disconnection is due to the customer's
inability to pay for service. Complainants were disconnected due to a hazardous condition
they created as permitted by A.A.C. R14-2-211(B)(1)(a), not for failure to pay for service.

¹⁴ *Id.*

1 Complainants' contention has been rejected by both the Court of Appeals and
2 the Mohave County Superior Court. In upholding MEC's disconnection of Complainants'
3 electric service, the Court of Appeals explained:

4 Moreover, MEC did not disconnect the Chantels' electrical
5 service because of an unpaid bill. MEC offered undisputed
6 evidence in support of its motion for summary judgment that it
7 disconnected the Chantels' service because the county directed
8 MEC to do so because of safety concerns caused by the structure
9 the Chantels had built directly beneath the electrical lines. *See*
10 *Tucker v. Hinds County*, 558 So.2d 869, 875-76 (Miss. 1990)
11 (utility company properly may shut off customer's power when
12 acting pursuant to directive from county official). Additionally,
13 MEC provided the Chantels with more than adequate notice of
14 the pending shut-off. Pursuant to A.A.C. R14-2-211(B)(1)(a), a
15 utility may disconnect service without notice when there is 'an
16 obvious hazard to the safety or health of the consumer or the
17 general population,' and MEC provided the Chantels both
18 written and personal notice prior to de-energizing the lines.¹⁵

19 Similarly, the trial court's Judgment,¹⁶ affirmed on appeal, finds:

20 MEC was not negligent in de-energizing the transmission lines.
21 MEC had no choice in its course of action due to actions by the
22 Plaintiffs and the mandate from the MCSSD [Mohave County
23 Special Services Division]. Under industry guidelines, the
24 Building was constructed too close to the already existing
25 transmission lines. The Plaintiffs constructed the Building
without notice to the County or MEC, without permission and
without addressing various legal issues.¹⁷

The *Decision* is *res judicata* as between the parties and must be followed by the
Commission.

¹⁵ *Decision* at pp. 7- 8, ¶16.

¹⁶ A copy of the Judgment is attached as Exhibit B to MEC's Motion for Reconsideration.

¹⁷ Judgment, p. 4, lines 7-10. The Judgment is attached as Exhibit B to MEC's Motion to Reconsider.

1 **C. Complainants' Motion to Hear Issues**

2 Complainants were directed to explain, in their Opening Brief, why the
3 Commission should act on the Motion to Hear prior to any evidentiary hearing on the
4 Complaint (assuming *res judicata* does not require dismissal of the Complaint) and to provide
5 valid legal authority supporting their contention.¹⁸ Again, other than asserting the Declaration
6 of Independence creates a right to alter or abolish the Commission and calling on the
7 Legislature to do so, Complainants cite no legal authority supporting their claim in their
8 Opening Brief or in the Motion. Once again, the Commission has no obligation to consider
9 any contention that is not supported by legal authority.¹⁹ Complainants' argument is without
10 merit and they have provided no basis to grant the Motion to Hear Issues at this stage of the
11 proceeding. For these reasons alone, the Motion should be summarily dismissed.

12 The first issue raised in the Motion (compliance with the administrative
13 requirements for the termination of a residential account) has already been addressed in
14 Section II.B.1., above. For the reasons, set forth therein, this portion of the Motion must be
15 summarily dismissed.

16 The second issue raised in the Motion to Hear Issues (whether an order
17 compelling MEC to file an application to abandon the lines should issue following
18 disconnection of service due to an unsafe condition on Complainants' property) is discussed in
19 in Section III, below. As explained therein, Complainants either do not understand or
20 intentionally misapply the Commission's rules. Therefore, this portion of the Motion to Hear
21 Issues must also be summarily dismissed.

22 **III. COMPLAINANTS' ABANDONMENT ALLEGATIONS**

23 In the proceedings before the Mohave County Superior Court, MEC "offered
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25 ¹⁸ PO, p. 7, ll. 18-21.

¹⁹ See Fn. 11, *supra*.

1 undisputed evidence in support of its motion for summary judgment that it disconnected the
2 Chantels' service because the county directed MEC to do so because of safety concerns caused
3 by the structure the Chantels had built directly beneath the electrical lines. Complainants
4 constructed a structure beneath MEC's electric line and creating an unsafe and hazardous
5 condition."²⁰ The Court of Appeals affirmed the trial court's grant of summary judgment on
6 Complainants' claim of wrongful termination.²¹

7 A.A.C. R14-2-211(B), in pertinent part, provides:

- 8 1. . . . Utility service may be disconnected without advance
9 written notice under the following conditions:
- 10 a. The existence of an obvious hazard to the safety or health
11 of the consumer or the general population or the utility's
12 personnel or facilities.
 - 13 b. The utility has evidence of meter tampering or fraud.
 - 14 c. Failure of a customer to comply with the curtailment
15 procedures imposed by a utility during supply shortages.
- 16 2. The utility shall not be required to restore service until the
17 conditions which resulted in the termination have been
18 corrected to the satisfaction of the utility.

19 Even though the Court of Appeals has confirmed that MEC acted properly in
20 disconnecting electrical service due to the unsafe condition created by Complainants,
21 Complainants still contend that MEC was and remains obligated to file an application to
22 abandon its de-energized electric line under A.A.C. R14-2-202(B). Complainants misapply
23 the rule. A.A.C. R14-2-202(B) provides:

24 Application for discontinuance or abandonment of utility service

- 25 1. Any utility proposing to discontinue or abandon utility
26 service currently in use by the public shall prior to such
27 action obtain authority therefor from the Commission.

28 ²⁰ Decision at pp. 7-8, ¶16.

29 ²¹ Decision at p. 8, ¶17.

1 2. The utility shall include in the application, studies of past,
2 present and prospective customer use of the subject
3 service, plant, or facility as is necessary to support the
4 application.

5 3. An application shall not be required to remove individual
6 facilities where a customer has requested service
7 discontinuance.

8 (emphasis added). This rule must be read in *pari materia* (with reference) to A.A.C. R14-2-
9 211(B).²² As recognized by the Arizona Court of Appeals, A.A.C. R14-2-211(B) expressly
10 authorized MEC's action in disconnecting Complainants electric service.²³ Subsection (B)(2)
11 of that same rule also expressly authorizes leaving Complainants' electric service disconnected
12 "until the conditions which resulted in the termination have been corrected to the satisfaction
13 of the utility." Complainants do not contend the structure that created the unsafe condition has
14 been removed. Additionally, before MEC will be required to establish service, Complainants
15 must pay, or make arrangements satisfactory to MEC to pay the costs MEC incurred and may
16 incur to disconnect and reconnect the electric service. A.A.C. R14-2-203(C) & (D).

17 Once service to Complainants was disconnected in accordance with Commission
18 rules, any facilities dedicated solely to that service are no longer "currently in use" thereby
19 rendering A.A.C. R14-2-202(B) inapplicable.²⁴ Moreover, where an unsafe condition is
20 created by the customer or allowed to continue, the customer should be considered as having
21 requested service discontinuance under A.A.C. R14-2-202(B)(3). In either case, no
22 application to discontinue or abandon utility service is required under the rule.

23 ²² *State ex rel. Larson v. Farley*, 106 Ariz. 119, 471 P.2d 731 (1970) (statutes should be read together
24 and harmonized if at all possible).

25 ²³ *Decision* at pp. 6-8.

²⁴ A.R.S. §40-285.C also makes ACC consent unnecessary where the facilities are no longer necessary
or useful in the performance of MEC's duties to the public.

1 Because the issue of abandonment arises out of the same facts involved in the
2 Mohave County Superior Court Complaint filed by Complainants, and because the superior
3 court had jurisdiction to construe the meaning and applicability of A.A.C. R14-2-202(B) to
4 those facts, Complainants are barred by the doctrine of *res judicata* from pursuing claims it
5 could have raised in the action against MEC, regardless of whether the claim was or was not
6 pursued.²⁵ Moreover, the trial court and the Court of Appeals rejected the Complainants
7 contention that MEC improperly disconnected their electric service.²⁶ Such a conclusion
8 encompasses any and all claims Complainants had that the disconnection was improper,
9 including their current claim that an application for abandonment is required by A.A.C. R14-2-
10 202(B).²⁷

11 IV. ADDITIONAL ISSUES RAISED BY COMPLAINANTS' OPENING 12 BRIEF

13 Complainants' use their Opening Brief to again cast false and unsubstantiated
14 allegations against MEC, MEC's counsel, the County, the Commission, Commission Staff and
15 the Hearing Division regarding the treatment of Complainants. Just as MEC recognizes the
16 Hearing Division and Commission Staff have not engaged in any conspiracy to deprive
17 Complainants their due process rights, MEC, its legal counsel and the County did not
18 participate in any scheme to deprive Complainants of electric service or to cause them damage.
19 In fact, Complainants were orally advised (and also received Stop Work Orders from Mohave
20 County) they needed to secure a building permit and that the structure they were building may
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23 ²⁵ See fn. 8, supra.

24 ²⁶ Decision at pp. 6-8.

25 ²⁷ Even though not required by rule to do so, MEC is willing to remove any facilities on Complainants
property provided the Complainants: (i) consent, in writing, to MEC entering their property upon
terms and conditions acceptable to MEC and (ii) pay the cost of removal (less salvage value, if any).

1 be a safety hazard weeks before they were at risk of having service disconnected.²⁸
2 Complainants chose to proceed to construct the structure, creating a hazardous condition and
3 leaving the County and MEC no choice but to de-energize the line over the structure in order
4 to protect MEC employees, the Complainants and the public generally.

5 In their Opening Brief, Complainants assert: "The main issue in this proceeding
6 is that MEC has not paid its rent due for having their lines and poles and equipment located on
7 the property in question."²⁹ This question, like the issues surrounding disconnection of service
8 and abandonment, has conclusively been determined adverse to the Complainants. The Court
9 of Appeals specifically ruled: "Accordingly, we affirm the grant of summary judgment on the
10 Chantels' claim for rent."³⁰

11 V. CONCLUSION

12 Complainants have been afforded a full and fair opportunity to press their claims
13 before the Commission, the Mohave County Superior Court and the Arizona Court of Appeals.
14 They alleged they were entitled to an award of damages for MEC's termination of service.
15 They asserted MEC should be compelled to provide them electric service. They argued they
16 were entitled rent from MEC. They did not prevail on any of these issues.

17 As the unsuccessful parties, they have been assessed attorneys' fees as well as
18 damages arising from their willful decision to create a safety hazard. Complainants, and the
19 Commission, are now bound by those judgments. It is time to conclude this matter. MEC is
20 entitled to dismissal of the Formal Complaint in its entirety and it looks forward to arguing its
21 position on August 5, 2014.

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24 ²⁸ See the November 5, 2008 Report issued by Steve Olea, a copy is attached to MEC's April 10, 2009
Response to Formal Complaint and Motion to Dismiss.

25 ²⁹ Op.Br., p. 5, ll.3-5.

³⁰ *Decision* at p. 9, ¶ 21.

1 DATED this 16th day of July, 2014.

2 CURTIS, GOODWIN, SULLIVAN,
3 UDALL & SCHWAB, P.L.C.

4
5 By: 

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12 PROOF AND CERTIFICATE OF MAILING

13 I hereby certify that on this 16th day of July, 2014, I caused the foregoing
14 document to be served on the Arizona Corporation Commission by delivering the original and
15 thirteen (13) copies of the above to:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 COPY of the foregoing hand-delivered
21 this 16th day of July, 2014 to:

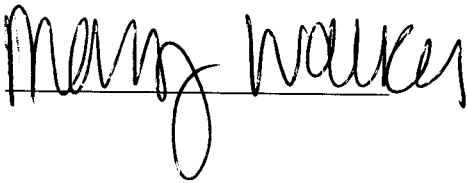
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6 COPY of the foregoing mailed and e-mailed
7 this 16th day of July, 2014 to:

8 Roger and Darlene Chantel
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